

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ELLA E. WOMACK, : CIVIL ACTION NO. 03-4213 (MLC)
Plaintiff, : **MEMORANDUM OPINION**
v. :
STATE OF NEW JERSEY, et al., :
Defendants. :
_____ :

THE COURT issuing an order to show cause why the second amended complaint should not be dismissed (1) in its entirety for lack of prosecution under Local Civil Rule 41.1(a) and Federal Rule of Civil Procedure ("Rule") 41(b), or (2) as to the defendants Mario Paparozzi and George Yefchak ("Unserved Defendants") for failure to comply with Rule 4(m) (dkt. entry no. 20); and it having appeared this was not the first time that this action had come to the Court's attention for lack of activity (see 1-10-05 Order to Show Cause); and

THE ACTION having been pending for more than 120 days without the plaintiff taking any proceedings; and the Court advising the plaintiff that the Court intended to dismiss the second amended complaint unless good cause was shown for the lack of prosecution, see L.Civ.R. 41.1(a), see also Fed.R.Civ.P. 41(b) (stating complaint may be dismissed for failure to prosecute); and the Court being authorized to impose harsh penalties when enforcing the Local Civil Rules, see Kabacinski v. Bostrom

Seating, No. 03-1986, 2004 WL 628867, at *3 n.3 (3d Cir. Mar. 30, 2004), United States v. 11 Vehs., Their Equip. & Accessories, 200 F.3d 203, 214 (3d Cir. 2000); and

IT APPEARING ALTERNATIVELY that the plaintiff had failed to serve the Unserved Defendants within 120 days after filing the second amended complaint;¹ and the Court advising the plaintiff that the Court intended to dismiss the second amended complaint as to the Unserved Defendants unless the plaintiff (1) showed good cause for this failure, or (2) established that service was effected on the Unserved Defendants within the 120-day period, see Fed.R.Civ.P. 4(m); and the Court, as required, having notified the plaintiff of the intention to dismiss this part of the second amended complaint on this ground, see Liu v. Oriental Buffet, No. 04-2850, 2005 WL 1394939, at *2 (3d Cir. June 14, 2005); and

THE PLAINTIFF failing to respond to the Court's inquiry by the deadline of October 24, 2005 (Order to Show Cause, at 3); and the Court waiting an additional ten days to allow for a late response, and receiving no response; and thus the Court intending

¹ The defendants State of New Jersey, New Jersey State Parole Board, Kenneth Connolly, Karen Fiorelli, Yolanda Garcia-Loper, David Wolfsgruber, and Katherine Hernandez have answered. (See 8-25-04 Am. Ans.) The Court terminated the action insofar as brought against the defendant Carla Marrow-Shabazz. (See 3-15-05 Ord.)

to dismiss the second amended complaint in its entirety; and for good cause appearing, the Court will issue an appropriate order and judgment.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge